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Attorneys for Limitation Plaintiffs

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF HAWAII

|                               |   |                               |
|-------------------------------|---|-------------------------------|
| In the Matter                 | ) | CV NO. 03-00672 SOM-BMK       |
|                               | ) |                               |
| of                            | ) |                               |
|                               | ) |                               |
| The Complaint of MORNING STAR | ) |                               |
| CRUISES, INC., a Hawaii       | ) |                               |
| corporation.                  | ) |                               |
|                               | ) | CV NO. 04-00588 SOM-BMK       |
| SHIROH FUKUOKA,               | ) | [CONSOLIDATED]                |
|                               | ) |                               |
| Plaintiff,                    | ) | <b>CONCISE STATEMENT OF</b>   |
|                               | ) | <b>FACTS; CERTIFICATE OF</b>  |
| vs.                           | ) | <b>SERVICE</b>                |
|                               | ) |                               |
| MORNING STAR CRUISES, INC.,   | ) | Trial: August 22, 2006        |
|                               | ) | Time: 9:00 a.m.               |
| Defendant.                    | ) | Judge: Hon. Susan Oki Mollway |
|                               | ) |                               |

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**CONCISE STATEMENT OF FACTS**

COMES NOW, Defendant/Limitation Plaintiff MORNING STAR CRUISES, INC., by and through their attorneys, the law firm of Chee & Markham, and hereby submits their Concise Statement of Facts as to which there are no genuine issues and which facts are essential for the Court's determination of the issues presented in Defendant/Limitation Plaintiff's motion for summary judgment pursuant to LR 56.1 of the Local Rules of Practice for the United States District Court for the District of Hawaii.

1. This incident arises out of an accident that occurred while Plaintiffs/Limitation Defendants participated in an ocean activity, the "seawalker" system, on August 14, 2002 in Kaneohe Bay, Hawaii. See *Plaintiff/Limitation Defendant's Complaint filed September 8, 2003*, p.5 n. 9.

2. The incident occurred in the navigable waters of the United States in the vicinity of Kaneohe Bay Ocean, Hawaii. See, *Limitation Plaintiffs First Amended Complaint for Exoneration From Or Limitation Of Liability filed December 18, 2003*, p.3, n.7; *Limitation Defendants Answer filed January 14, 2004* p. 2, n.2.

3. The incident occurred while Mitsuko Fukuoka was participating in the Defendants/Limitation Plaintiffs' ocean activity, utilizing the "seawalker" system. See *Plaintiff's Complaint*, p.5, n.9.

4. Plaintiff/Limitation Defendant allege that Morning Star was negligent, *inter alia*, in its operation, management, and maintenance of the ocean activity; its failure to timely discover and respond to Mitsuko Fukuoka; and in its negligent response to Mitsuko Fukuoka's plight. See *Plaintiff's Complaint*, p. 5-6, n. 10 and 12.

5. Morning Star Cruises, Inc. is a Hawaii corporation doing business in the City and County of Honolulu, State of Hawaii, and at all times pertinent was engaged in the business of transporting passengers and providing activities over water for hire. See *Limitation Plaintiffs First Amended Complaint for Exoneration From Or Limitation Of Liability*, p.2, n..2; *Limitation Defendants Answer*, p. 2, n.2.

6. Morning Star filed its Complaint For Exoneration From Or Limitation Of Liability on December 8, 2003, and First Amended Complaint on December 18, 2003, requesting relief under the Limitation of Liability Act, 46 U.S.C. § 181, *et seq*, and Rule F of the *Supplemental Rules for Certain Admiralty and Maritime Claims, Federal Rules of Civil Procedure*.

DATED: Honolulu, Hawaii, May 17, 2006.

**/s/ Desiree Hikida Mokuohai**  
**GREGORY K. MARKHAM**  
**KEITH K. KATO**  
**DESIREE HIKIDA MOKUOHAI**

Attorneys for /Defendant  
Limitation Plaintiff  
**MORNING STAR CRUISES, INC.**

**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that a copy of the foregoing document was duly served upon the below-identified party at their respective address by means of hand-delivery on May 17, 2006.

**ROBERT D. KAWAMURA, ESQ.**  
550 Halekauwila Street., Suite 106  
Honolulu, Hawaii 96813

Attorney for Limitation Defendants

DATED: Honolulu, Hawaii, May 17, 2006.

/s/ Desiree Hikida Mokuohai  
**GREGORY K. MARKHAM**  
**KEITH K. KATO**  
**DESIREE HIKIDA MOKUOHAI**

Attorneys for Limitation Plaintiff